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Lawrence, KS 66049

October 21, 2019

SUBMITTED ELECTRONICALLY VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte, *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, FCC 19-58 (rel. July 9, 2019) and *Wireline Competition Bureau Seeks Comment on Proposed Eligible Services List for the E-rate Program*, WC Docket No. 13-184, Public Notice, DA 19-738 (WCB rel. Aug 2, 2019)

Dear Ms. Dortch:

On October 17, 2019, Debi Sovereign, Owner/CFO, and Jane Kellogg, Founder, both of Kellogg & Sovereign Consulting, LLC (“Kellogg & Sovereign”); Dan Riordan, President of On-Tech Consulting, Inc.; and myself, as counsel for immixGroup, Inc., met with Stephanie Minnock and Gavin H. Logan of the Wireline Competition Bureau.

During that meeting, the parties discussed the eligibility of Category 2 switches. Ms. Sovereign and Mr. Riordan provided the handouts in Exhibit 1, which demonstrate the different components of the network, including which components are eligible for E-rate funding and which are not.¹ Switches are E-rate eligible equipment that distribute data to multiple end user devices, none of which are eligible themselves for E-rate funding. The eligibility of the switch is not dependent on the type of end user device, but on the fact that it distributes data.

Further, services and equipment must be used for “educational purposes,” which the Commission has defined as “activities that are integral, immediate, and proximate to the education of students.”² Activities that customarily occur on library or school property are presumed to be integral, immediate, and proximate to the education of students and are therefore eligible for discounts on associated services.³

Mr. Riordan noted that security cameras are now routinely used in schools to protect students

¹ See Exhibit 1.

² *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11332-33 ¶ 99 (2013) (*E-rate Modernization NPRM*).

³ *Id.*

and monitor the safety of their environment. Just like a school nurse may use E-rate eligible services to perform his duties to ensure the health and safety of students, so a security guard may use the E-rate eligible services to perform her duties for the health and safety of students. USAC itself notes that school-related activities of school support staff are “eligible activities.”⁴

On behalf of immixGroup, I provided an appeal that is currently pending before USAC. USAC had sought recovery of funding for switches that were connected to, in part, security cameras used by the school to keep students safe in their school.⁵ immixGroup argues, among other points, that the switches are an eligible service listed on the Eligible Services List and using them to provide connectivity to security cameras does not render them ineligible.⁶ Keeping students safe in their classrooms serves an educational purpose, especially in this day and age.⁷

Please let us know if you have any questions.

Respectfully submitted,



Gina Spade
Counsel for immixGroup, Inc.

Attachments

cc: Stephanie Minnock, TAPD/WCB
Gavin H. Logan, TAPD/WCB
Debi Sovereign
Jane Kellogg
Dan Riordan

⁴ See USAC website at <https://www.usac.org/sl/applicants/beforeyoubegin/eligible-services/educ-purposes.aspx> (“Eligible activities at schools include, but are not limited to, the school-related activities of school administrators, school counselors, school nurses, school technology workers, cafeteria workers, and school bus drivers.”).

⁵ Exhibit 2, Letter from immixGroup, Inc., to USAC, Letter of Appeal, filed August 28, 2018.

⁶ *Id.*

⁷ *Id.*

EXHIBIT 1

Discussion of Educational Purpose and USAC cost allocation of network switches to remove connections to security cameras, phones.

Deborah Sovereign & Jane Kellogg, Kellogg & Sovereign Consulting
Dan Riordan, On-Tech
Gina Spade, Broadband Legal Strategies

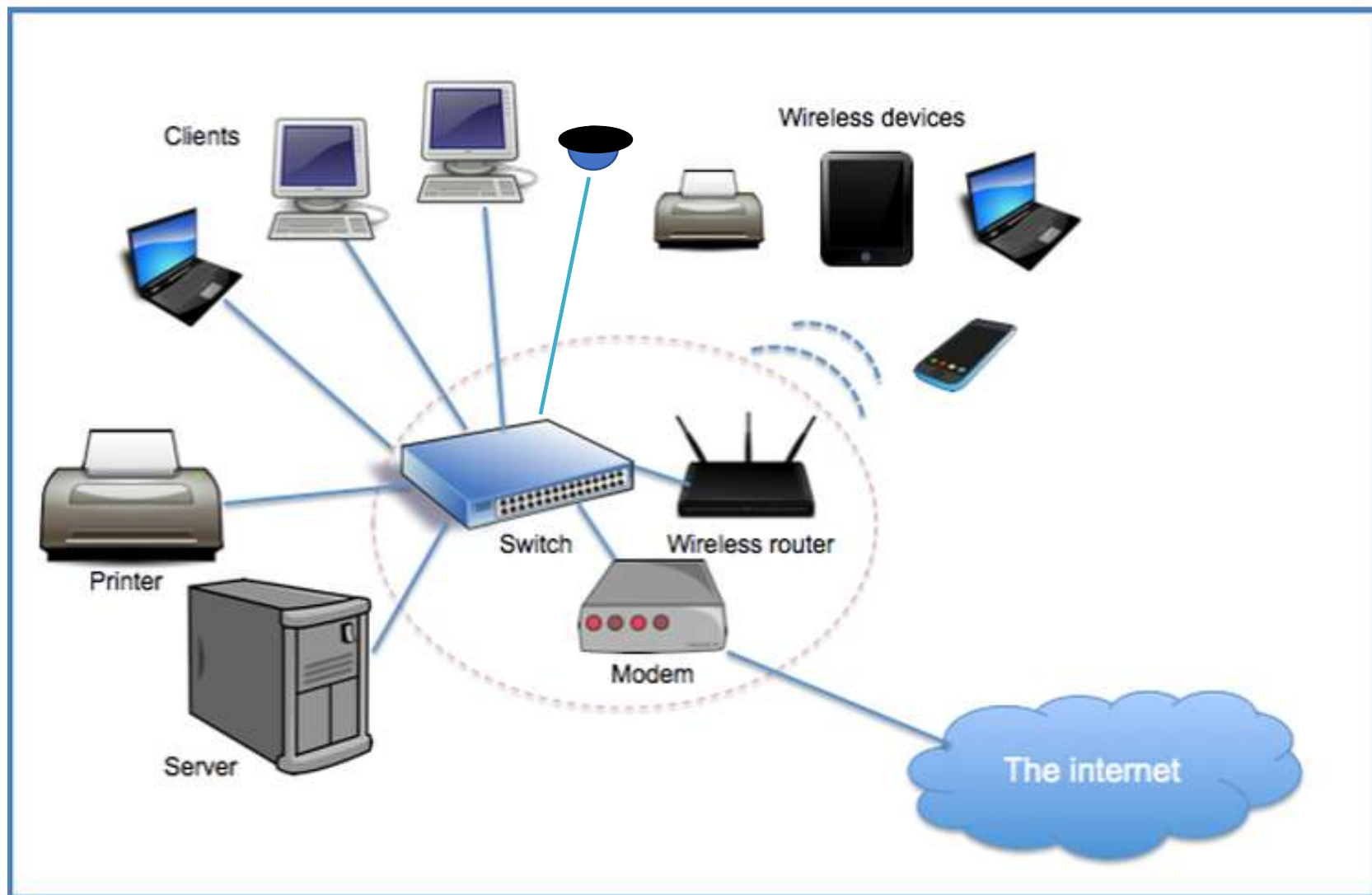
Definition of Educational Purposes

E-rate program discounts are limited to services used for "educational purposes." E-rate applicants must therefore certify that funds will be used primarily for educational purposes, defined as activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons.

Activities that customarily occur on library or school property are presumed to be integral, immediate, and proximate to the education of students or the provision of library services to library patrons and are therefore eligible for discounts on associated services.

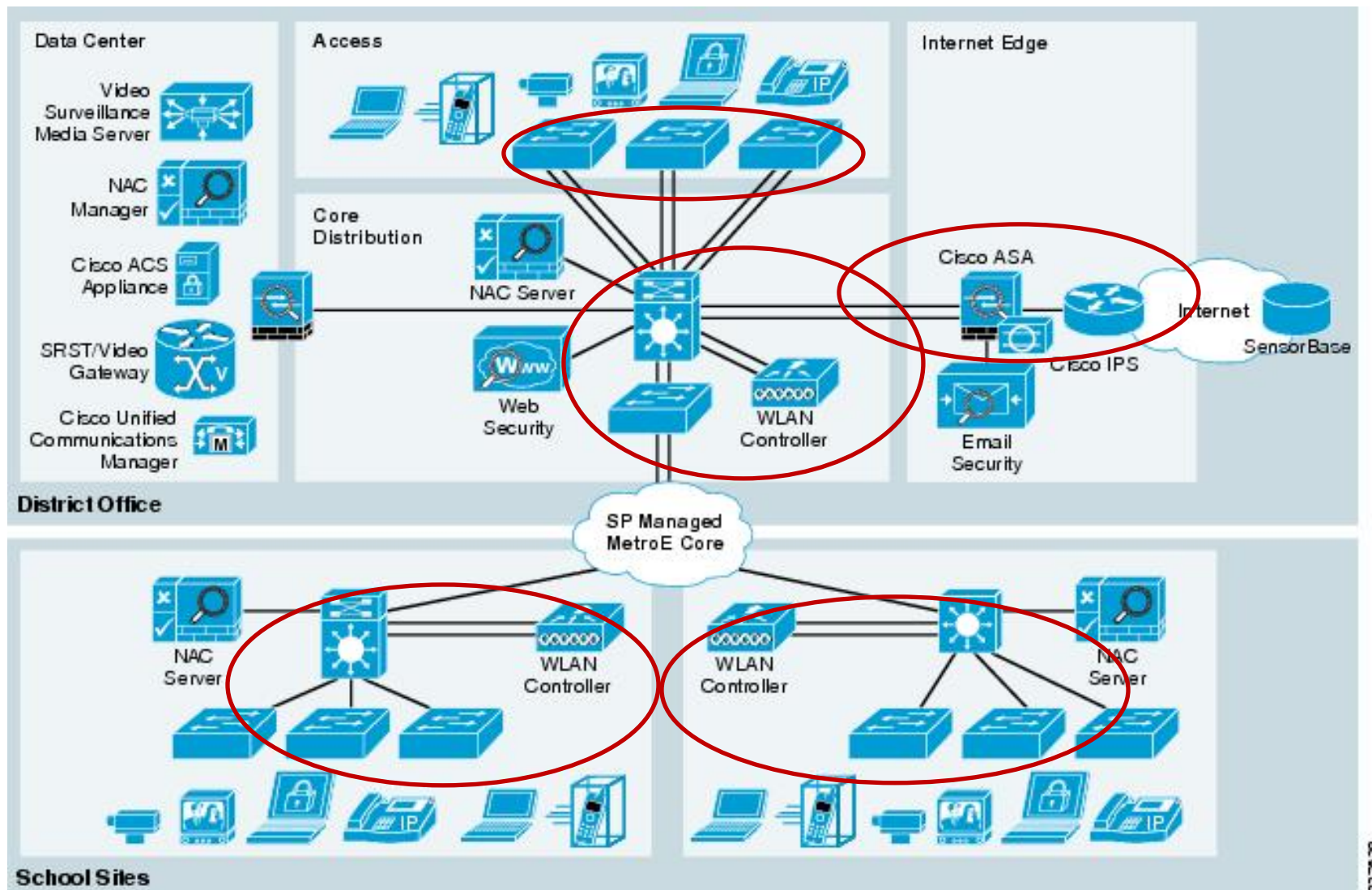
- Eligible activities for schools include, but are not limited to, the school-related activities of school administrators, school counselors, school nurses, school technology workers, cafeteria workers, and school bus drivers.
- Eligible activities for libraries include, but are not limited to, the library-related activities of library administrators, library technology workers, library bookmobile drivers, and interlibrary loan workers. All eligible products and services must be provided to and paid for by the entities indicated as receiving service.

<https://www.usac.org/sl/applicants/beforeyoubegin/eligible-services/educ-purposes.aspx>



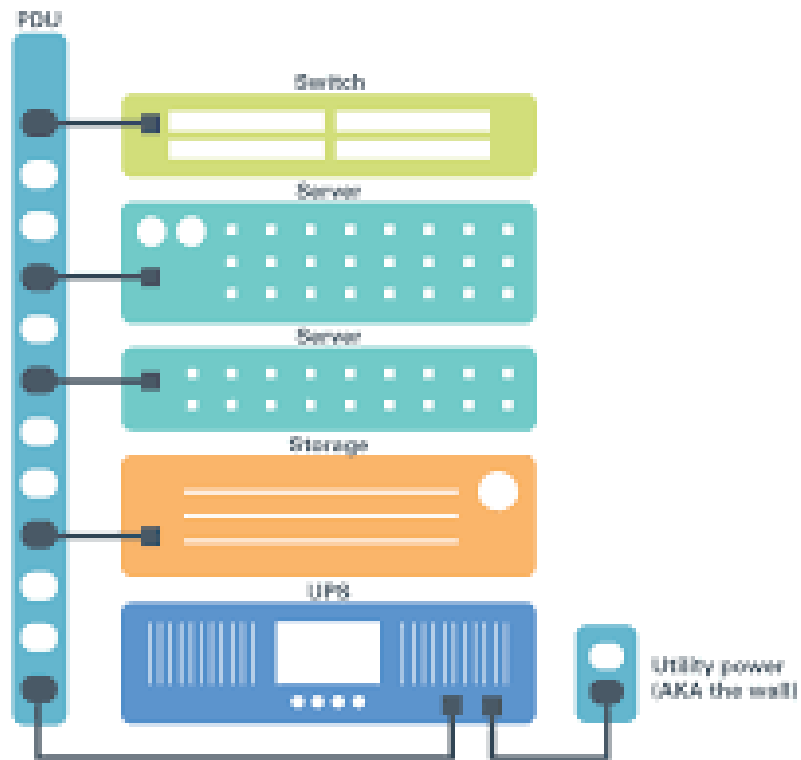
Switch, modem, wireless router = eligible

End user devices and server = not eligible



Network distribution (router, switch, wireless access points, wireless access controller & cabling = eligible for E-Rate discount

End user equipment = not eligible



Uninterruptible Power Supply

2 servers – not eligible

1 storage appliance – not eligible

1 switch – eligible

UPS in this example is 25% eligible for E-Rate discount

Cost Allocations

- E-rate funds may only be used to pay for eligible services and products used by eligible entities for eligible purposes (i.e., primarily educational purposes).
- If a product or service has both eligible and ineligible functions, the cost of the ineligible functions must be allocated out of the funding request.
- The cost allocation must be *based on a reasonable, tangible basis that reaches a realistic result*.
- A cost allocation requires a clear delineation of costs.
- Cost allocations must be supported by documentation.

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USAC Training Q&A Friday, September 20. Bernie Manns, USAC

Regarding cost allocation of network switch.

From: Bernie Manns <Bernie.Manns@usac.org>

Sent: Sunday, September 22, 2019 5:29 AM

To: Deborah Sovereign <dsovereign@kelloggllc.com>

Subject: RE: Educational Purpose

Deb,

I'm not aware of any change to the rules in regards to "Educational Purposes". I think the discussion became somewhat crossed as we talked through the various examples with the group. The ineligible cabling that was discussed with the gentlemen who had the pending appeal referenced to IP cameras utilized for security purposes not IP camera's utilized for an educational purpose. Below is the section of the FY2019 ESL that provides guidance on this item. USAC only is empowered to administer the rules as provided by FCC rules and orders so any decisions would have to be consistent with these rules and orders.

In regards to cabling dedicated to the support of voice related services, this would be considered ineligible due to the phase down where voice services are no longer eligible for E-rate funding. This would be consistent with cabling dedicated to the support of any other ineligible service or equipment.

9. Third, we decline several requests that additional services or equipment be eligible for E-Rate support under Category Two.¹⁰ For example, Aruba requests that policy management systems and self-provisioned network management be added to the ESL as eligible services.¹¹ As explained in the *FY2016 ESL Order*, the Commission determined in the *2014 First E-Rate Order* that network management and operation services are only eligible when provided by a third party as part of eligible managed internal broadband services.¹²

10. We also decline Aruba's request to have E-Rate program support cover the entire cost of multi-year contracts for basic maintenance of internal connections in the first funding year of the contract¹³ because this request is contrary to E-Rate program rules.¹⁴ Similarly, Cherokee County School

¹⁰ SECA Comments at 3-4 (requesting clarification regarding whether leasing of equipment is eligible under internal connections, managed internal broadband services, or both).

¹¹ See *supra* para. 5, n.13.

¹² *FY2019 ESL*, Appendix B at 7.

¹³ ApplianSys Comments at 1.

¹⁴ See *supra* para. 7.

¹⁵ See also *FY2019 ESL*, Appendix B at 3, 5.

¹⁶ Some commenters requested network or data security services and products be made eligible. See Cherokee County School District Comments at 1 (requesting that network security services to protect schools from potential data breaches be made eligible, as well as content filters and load balancers); see also Cumberland County Schools Comments at 2-4 (requesting surge protection and lightning suppression equipment be made eligible). In 2014, the Commission eliminated support for data protection devices and declined to expand eligibility to additional network security services to focus Category Two funding on other necessary wireless local area network equipment and services. See *2014 First E-Rate Order*, 29 FCC Rcd at 8919, paras. 120-21 & n.275. Another commenter requested that physical safety and security equipment be made eligible. Tech Ed Comments at 1 (requesting that physical safety and security devices (e.g., cameras) and related equipment and monitoring services be eligible). Support for these types of services would be inconsistent with the Commission's rules and previous Commission decisions. See 47 CFR § 54.503(c)(2)(i)(A) (requiring that the services supported by E-Rate funds be used primarily for educational purposes); see also *Requests for Waiver of Decisions of the Universal Service Administrator by Batesville Community School Corporation et al., Schools and Libraries Universal Service Support Mechanism, Modernizing the E-rate Program for Schools and Libraries*, CC Docket No. 02-6 and WC Docket No. 13-184, Order, 31 FCC Rcd 7731, 7733, para. 6 (WCB 2016) (denying requests for waivers related to funding for individual data plans based on public safety concerns).

¹⁷ Aruba Comments at 2.

¹⁸ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 30 FCC Rcd 9923, 9931, para. 21 (WCB 2015) (*FY2016 ESL Order*).

¹⁹ Aruba Comments at 2-3.

²⁰ See 47 CFR § 54.503(c)(2)(i)(A) (requiring that the services supported by E-Rate funds be used primarily for educational purposes).

I hope this helps clarify. An ineligible device can be attached to cabling and the cabling can be considered still eligible as long as education purpose consistent with the rules and orders as reference in your email can be established. For example, a school may have a server that they utilize to store and access education documents that are utilized in teaching plans. The server would not be eligible consistent with program rules but the information being sent over the cabling is for an educational purpose so the cabling would be eligible given all other program rules were met.

My apologies for any confusion lost in the overall discussion.

Regards,

Bernie Manns

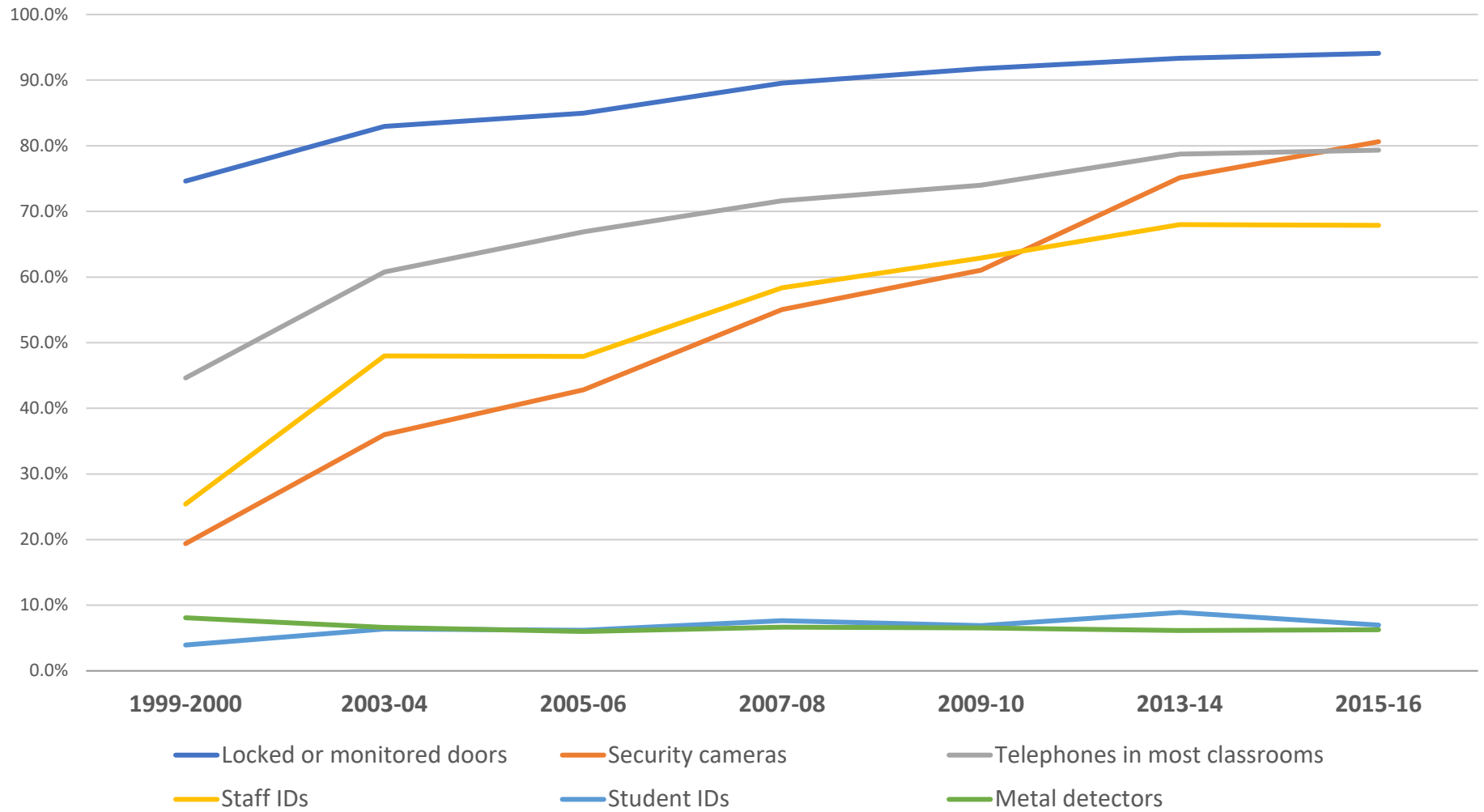
(202) 772-5214 (ph)

Bernie.Manns@usac.org | www.usac.org

According to NCES data, security cameras are the fastest growing security measure in public schools, growing from 19.4% in 1999-2000 to 80.6% in 2015-2016.

https://nces.ed.gov/programs/digest/d17/tables/dt17_233.50.asp

Selected School Security Measures

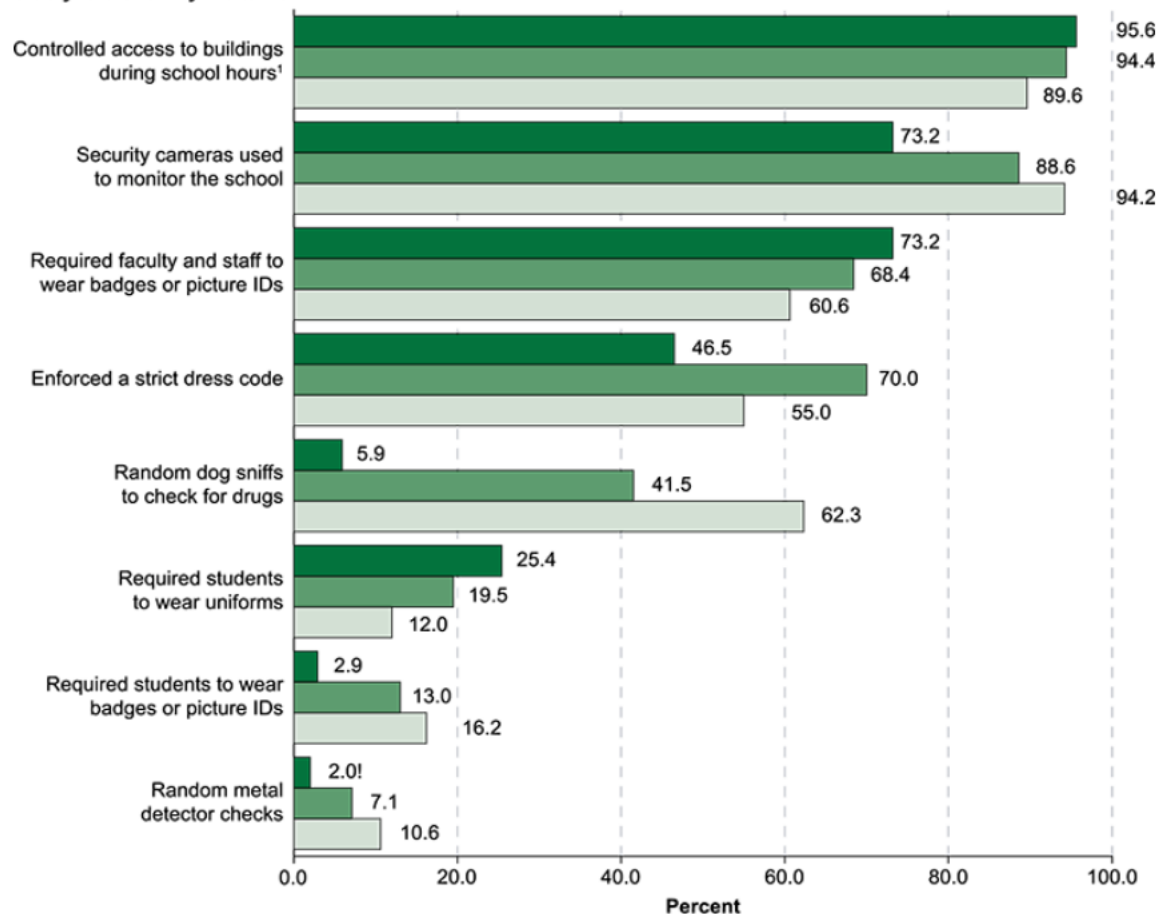


In 2017-2018, access control and security cameras are the most common security measures.

<https://nces.ed.gov/fastfacts/display.asp?id=334>

Percentage of public schools that used selected safety and security measures, by school level: School year 2015–16

Safety and security measure



In education and healthcare, most security camera providers indicate that 80% to 100% of new systems are IP-based.

https://www.campussafetymagazine.com/university/study_shows_more_than_9_in_10_campuses_have_security_cameras/slideshow/11/

Percentage of New Video System Sales That Are IP-Based

	2016	2012
None	0%	5%
1%-19%	6%	21%
20%-39%	6%	11%
40%-59%	6%	18%
60%-79%	21%	15%
80%-99%	36%	19%
100% or more	24%	11%

EXHIBIT 2

August 28, 2018

Letter of Appeal
Universal Service Administrative Company
Schools and Libraries Division – Correspondence Unit
30 Lanidex Plaza West
P.O. Box 685
Parsippany, NJ 07054-0685

Re: Appeal of immixGroup; FY 2015; BEN: 126817; SPIN: 143047906

Dear Appeals Reviewer:

Pursuant to 47 C.F.R. § 54.719(a), immixGroup, Inc. (immixGroup) hereby respectfully submits this appeal of a decision by the Universal Service Administrative Company (USAC) to recover funds from immixGroup for funding year 2015.

Funding Year	Form 471#	FRN#s	Recovery Letter
2015	1038013	2835226 2834762	June 29, 2018

Contact:

/s/ Jeff Ellinport

Jeff Ellinport
Director, Legal Affairs
immixGroup, Inc.
8444 Westpark Dr. Suite 200
McLean, VA 22102
Jeff_Ellinport@immixgroup.com
703-752-0608

/s/ Gina Spade

Gina Spade
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202-907-6252

Counsel for immixGroup, Inc.

USAC's Funding Commitment Adjustment Explanation

During an Audit, it was determined \$19,950.00 was improperly disbursed for the following ineligible items: Switches Connected to Security Cameras. The pre-discount cost associated with these items is \$24,937.50, respectively, for a total ineligible amount of \$24,937.50. At the applicant's 80 percent discount rate, this resulted in an improper disbursement of \$19,950.00. FCC Rules provide that funding may be approved only for eligible products and/or services. The USAC web site contains a list of eligible products and/or services. See the web site, <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx> for the Eligible Services List. On the SPAC Form, the authorized person certifies at Item 10 that the service provider has billed its customer for services deemed eligible for support. Therefore, USAC has determined that the service provider is responsible for this rule violation. Accordingly, USAC will seek recovery of \$19,950.00 of improperly disbursed funds from the service provider.¹

Summary

immixGroup respectfully appeals USAC's decision to recover disbursed funds for funding year 2015. USAC has determined that the switches that immixGroup provided to its customer, Winston-Salem/Forsyth County School District ("Winston-Salem" or the "District"), are ineligible services because the District connected security cameras to them. immixGroup believes that USAC's decision to recover funding for these switches should be reversed. The switches are an eligible service listed on the Eligible Services List, and using them to provide connectivity to security cameras does not render them ineligible. Keeping students safe in their classrooms is certainly an educational purpose, especially in this day and age. But even if connectivity to security cameras were not an educational use, Commission precedent states that cost allocation is not required for mixed use of a piece of equipment as long as some of the use is E-rate eligible.

Finally, USAC is seeking to recover nearly \$45,000—the entire amount of funding for the switches—even though Commission precedent makes clear that the attachment of a piece of ineligible hardware to an otherwise eligible service does not render the entire service ineligible. Accordingly, if USAC continues to seek recovery, it should cost-allocate out the cost of providing connectivity to the security cameras and recover only that amount.

Background

On April 10, 2015, Winston-Salem filed an FCC Form 471 seeking funding for, among other things, internal connections provided by immixGroup under the two above-captioned FRNs. Winston-Salem received a funding commitment, and immixGroup provided the services as requested and billed Winston-Salem for them.

¹ Exhibit 1, Recovery of Improperly Disbursed Funds Letters. immixGroup received and is appealing two RIDFs that featured this same explanation: one for \$19,950.00 (FRN 2835226) and one for \$25,650.00 (FRN 2834762).

In 2016 and 2017, at the direction of USAC, an outside firm conducted an audit to examine Winston-Salem's compliance with the E-rate program.² The resulting audit report found, in relevant part, that Winston-Salem was not using all of the equipment for which it had received funding pursuant to the above-captioned FRNs.³ A site visit had revealed that some switches had been installed and mounted but were not in use.⁴ Winston-Salem explained to the auditors that the switches were not yet in use because the site visit took place nearly two months before the service implementation deadline, and thus installation was still underway.⁵ Winston-Salem also told the auditors that some of the switches would be used to provide connectivity to security cameras.⁶ In its response to the audit report, Winston-Salem explained that it believed, based on its reading of the guidance on USAC's website regarding "educational purposes," that switches purchased with E-rate funding could be used to provide connectivity to security cameras.⁷ The auditor declined to revise its finding in response to this explanation, citing a Wireline Competition Bureau public notice denying an appeal of an earlier USAC decision that "cabling drops used for security cameras were ineligible."⁸

On June 29, 2018, immixGroup received RIDF letters from USAC for the two above-captioned FRNs.⁹ The letters stated that the funding was improperly disbursed for ineligible items; the explanation for recovery is quoted in its entirety above.

Appeals of USAC decisions are due within 60 days. As such, this appeal is timely filed.

Discussion

immixGroup believes that USAC erred in its conclusion that switches that provide connectivity to security cameras are ineligible for E-rate support. We do not believe USAC is suggesting that the switches themselves are ineligible services in and of themselves, since switches are explicitly included on the 2015 Eligible Services List. Rather, USAC appears to believe that the switches are rendered ineligible because they are being used for purposes that are not "educational." In this appeal, immixGroup argues that (1) security cameras do indeed constitute an educational purpose of E-rate-supported services, and (2) even if school security was not an educational purpose, the connectivity these switches provide to security cameras is an "ancillary use" of mixed-use switches, which does not render the switches ineligible and need not be cost-allocated out by the applicant.

² Exhibit 2, Audit Report for USAC by Cotton & Company (Sept. 13, 2017) (Audit Report).

³ *Id.* at 8.

⁴ *Id.*

⁵ *Id.* at 9.

⁶ *Id.* at 8.

⁷ *Id.* at 9.

⁸ *Id.* at 10.

⁹ Exhibit 1.

immixGroup also disputes the amount that USAC seeks to recover. Even if USAC is correct that switches that provide connectivity to security cameras are ineligible for E-rate support, it should be seeking recovery *only* for the cost associated with providing connectivity to the cameras, not for the entire amount disbursed.

a. Keeping Students Safe in School Is an Educational Purpose

There is no question that the switches immixGroup provided to Winston-Salem are eligible services. Switches were specifically listed as eligible equipment on the funding year 2015 Eligible Services List (ESL).¹⁰ USAC rightly identified the switches as eligible services when it committed and disbursed funds for them, and in its RIDFs USAC does not suggest that the switches would not be eligible under any circumstances. Rather, USAC's decision to seek recovery of the full amount of funding for these switches appears to be based on the mistaken belief that certain equipment attached to these switches—namely, security cameras—renders the switches ineligible. But this analysis is inconsistent with the broad definition of “educational purposes” that the Commission has adopted.

The Communications Act requires that services be “for educational purposes” in order to be eligible for E-rate support.¹¹ The Commission has defined “educational purposes” very broadly, as “activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services.”¹² The Commission has established a presumption that services provided on campus serve an educational purpose.¹³ This means that the burden of proof is on USAC to prove that a service provided on a school campus is *not* serving an educational purpose.

In light of this precedent, there can be no doubt that school security constitutes an “educational purpose,” especially in this day and age. Faced with a far too common and well-publicized epidemic of school shootings, American students live with the daily reality of lockdown drills, armed security guards, and metal detectors at the school entrances.¹⁴ Robust school security is of paramount importance to these students, their teachers, and their parents. Given the forgoing it would be hard to dispute that school security and safety does not serve an “educational purpose.” In fact, one could argue it serves the most critical of educational purposes. To

¹⁰ *Schools and Libraries Universal Service Support Mechanism, et al.*, CC Docket No. 02-6, Order, 29 FCC Rcd 13404, 13421, Appendix C (Wireline Comp. Bur. 2014).

¹¹ 47 U.S.C. § 254(h)(1)(B). The service should be primarily or significantly used to facilitate connectivity. *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18762, 18805 ¶ 99 (2010) (*Sixth Report and Order*).

¹² *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11332-33 ¶ 99 (2013) (*E-rate Modernization NPRM*).

¹³ *Id.*

¹⁴ See, e.g., “Threat of Shootings Turns School Security Into a Growth Industry, *New York Times* (Mar. 4, 2018), <https://www.nytimes.com/2018/03/04/business/school-security-industry-surges-after-shootings.html> (noting that since late 2012, more than 400 people have been shot in schools in the United States). The Washington Post website features an up-to-date database of school shootings, which estimates that more than 215,000 American students have experienced gun violence at school since 1999. See <https://www.washingtonpost.com/graphics/2018/local/school-shootings-database/>.

reiterate, the Commission established a presumption that activities on school grounds serve an educational purpose. The burden of proof is on USAC to prove that school security is not an educational purpose; an applicant does not have to prove that it is. USAC has not satisfied its burden here.

Commission orders and USAC's website both acknowledge that E-rate services will be used at schools but outside the classroom.¹⁵ USAC's website includes in its description of educational purposes "school-related activities" by "school administrators," as well as "school counselors, school nurses, school technology workers, cafeteria workers, and school bus drivers."¹⁶

Winston-Salem considers its security personnel part of the schools' administrative team.

The switches provide real-time internal connectivity, as security personnel monitor the cameras in real time. There is no reason to treat the "school-related activities" of security personnel any differently from the school-related activities of nurses or bus drivers, for example.

As a matter of Commission rule, policy and common sense, then, USAC cannot justify denying E-rate funding for connectivity to security cameras on the ground that it does not constitute an educational purpose. Students and teachers cannot focus on learning if the school district does not take reasonable steps to ensure their safety, and security cameras are a crucial piece of technology to make school campuses secure. Thus, there is no good legal or policy reason to deny E-rate funding for otherwise eligible services that provide connectivity to security cameras. On the contrary, public policy demands that school safety be considered an "educational purpose" under the E-rate program.

b. USAC Exceeded Its Authority Because There Is No Commission Precedent for Its Determination That Switches Cannot Be Used to Connect Security Cameras to a School's Internal Network

As for the legal basis of USAC's decision to seek recovery, USAC appears to have determined that "switches connected to security cameras" are ineligible for E-rate support. To support its decision, USAC includes only general references to the Commission's rules and the Eligible Services List. But neither the rules nor the Eligible Services List say anything about the use of E-rate-eligible services for school security. In fact, the Commission has never held that school security is not an educational purpose, nor has it ever identified "switches connected to security cameras" as an ineligible service. USAC therefore exceeded its authority by interpreting the Commission's rules in the manner it did.

immixGroup knows of only one Bureau-level decision that could remotely be viewed as supporting USAC's decision. But, as explained below, that decision is not sufficient legal precedent for denying funding for connectivity to security cameras.

The audit report discussed in the Background section above cited a November 2016 Wireline Competition Bureau streamlined public notice for the proposition that the "FCC [had] upheld

¹⁵ See *E-rate Modernization NPRM*, 28 FCC Rcd at 11333 ¶ 100; see also *id.* at 11432 Appendix B – 2013 Eligible Services List ("Some services outside of a school or library location may also be eligible for discount in certain cases, such as use by teachers or other school staff while accompanying students on a field trip or sporting event.").

¹⁶ See <https://www.usac.org/sl/applicants/beforeyoubegin/eligible-services/educ-purposes.aspx>.

USAC's decision that . . . services for security cameras were ineligible."¹⁷ USAC does not explicitly cite this public notice in its RIDFs. However, to the extent that USAC agrees with the audit report that this public notice constitutes Commission precedent on the eligibility of switches providing connectivity to security cameras, immixGroup respectfully explains that the public notice is insufficient legal precedent for USAC's decision here.

The November 2016 public notice denied an appeal by Facilities Solutions Group, Inc. of a USAC decision to recover funding for cable drops attached to security cameras.¹⁸ But that decision cannot be cited as precedent for the proposition that switches that provide connectivity to security cameras are ineligible for E-rate support. For one thing, the Bureau's decision is currently under reconsideration.¹⁹ Relatedly, Facilities Solutions Group's petition for reconsideration argued that the Bureau seemed to have misunderstood the underlying facts and assumed that the cable drops in question were used *exclusively* to connect security cameras to the school's local area network. As the petition for reconsideration explains, in fact, the cable drops were *not* dedicated facilities, but were used *only in part* to provide connectivity to security cameras. If the Bureau's decision was based on an incorrect factual misunderstanding, then the decision in that case may not stand.

Even if it were factually correct, however, the Bureau's decision in its November 2016 public notice is not *legally* sound. First, it relies upon precedent that is simply not applicable. The main decision the Bureau cites in support of its denial of Facilities Solutions Group's appeal is the Bureau-level *AllWays Order*, which denied 25 appeals of USAC decisions that E-rate funding had been used for ineligible services.²⁰ But that order did not address the use of E-rate-funded services for security purposes, and none of the underlying appeals involved such use. The other order the Bureau cites is even less supportive: the *Batesville Order*, another bureau-level order, merely found that public safety concerns on their own do not justify purchasing less cost-effective services.²¹ It is completely irrelevant to the Facilities Solution Group appeal, and it is equally irrelevant here, where there is no allegation that Winston-Salem did not select the most cost-effective services.

¹⁷ Audit Report at 8.

¹⁸ *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket Nos. 96-45, 02-6, WC Docket No. 06-122, Public Notice, 31 FCC Rcd 12697, 12704 (2016) (November 2016 Public Notice); *see also* Request for Review of the Decision of the Universal Service Administrator by Facilities Solutions Group, Inc., CC Docket No. 02-6 (filed Apr. 27, 2016).

¹⁹ Petition for Reconsideration Filed by Facilities Solutions Group, Inc., CC Docket No. 02-6 (Dec. 14, 2016).

²⁰ *Requests for Waiver and Review of Decisions of the Universal Service Administrator by AllWays, Inc. (Prairie Hills School District 144); Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 1968, 1968-69 ¶ 1 (Wireline Comp. Bur. 2012).

²¹ *Requests for Waiver of Decisions of the Universal Service Administrator by Batesville Community School Corporation et al.; Schools and Libraries Universal Service Support Mechanism; Modernizing the E-rate Program for Schools and Libraries*; CC Docket No. 02-6, WC Docket No. 13-184, Order, 31 FCC Rcd 7731, 7733-34 ¶¶ 6-9 & nn. 21-22 (Wireline Comp. Bur. 2016).

Most importantly, though, the Bureau's decision is an inappropriate use of delegated authority. The eligibility of services used to provide connectivity to security cameras has never been addressed by the full Commission and is thus a "novel question" that cannot be resolved at the Bureau level.²² Even putting aside the Bureau's lack of authority to make the decision, surely the E-rate community is entitled—as a matter of law and policy—to a better analysis than a mere footnote in a public notice that cites orders that are not relevant.

In short, there is no Commission precedent that supports USAC's decision. USAC thus exceeded its authority by interpreting the Commission's rules to deny E-rate funding for switches that provide connectivity to security cameras.²³ To the extent that USAC relied on the November 2016 public notice as a foundation of its decision, such reliance was inappropriate and must be reversed.

c. Alternatively, Security Camera Connectivity Is an Ancillary Use That Need Not Be Cost-Allocated Out by the Applicant

immixGroup does not argue that a security camera is itself an eligible service. Rather, immixGroup argues that a *switch*—a clearly eligible service, as explained above—is not rendered ineligible merely because a portion of its capacity is used to provide connectivity to an ineligible functionality, including a security camera. Commission precedent clearly states that "ancillary use" of E-rate-eligible services is allowed where it is impractical to cost-allocate them out. That is exactly the case here: to the extent that USAC believes that connectivity to security cameras is not an educational purpose, it is nonetheless a permissible use of an eligible service because it makes no sense to expect an applicant to cost-allocate out a single port, or a few ports, on an otherwise eligible switch.

In the *Third Report and Order*, the Commission discussed mixed use of an E-rate-eligible service.²⁴ The Commission revised its rules to allow "ancillary" use of ineligible functionalities where "(1) a price for the ineligible component that is separate and independent from the price of the eligible components cannot be determined, and (2) the specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality."²⁵

²² See 47 C.F.R. § 54.722(a) ("Requests for review of Administrator decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Wireline Competition Bureau; provided, however, that requests for review that raise novel questions of fact, law or policy shall be considered by the full Commission."); 47 C.F.R. § 0.291(a)(2) ("The Chief, Wireline Competition Bureau shall not have authority to act on any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.").

²³ See 47 C.F.R. § 54.702(c) ("The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.").

²⁴ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order, 18 FCC Rcd 26912 ¶¶ 35-39 (2003) (*Third Report and Order*).

²⁵ *Id.* ¶ 37; see also 47 C.F.R. § 54.504(e).

Both of those criteria are satisfied here. Where a single port (or a few ports) on a switch is used for an ineligible functionality, it is unrealistic and pointless to expect an applicant to cost-allocate out that single port, which has no value on its own. Surely USAC should not be in the business of examining how every individual port on an eligible switch is being used. Where the switch is being used in its entirety to provide connectivity for a school network, as is the case here, at worst the connectivity provided to a security camera is an ancillary use that cannot realistically be cost-allocated out.

With respect to the second criterion—that the “specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality,” that is also true here. USAC made no allegation that Winston-Salem had failed to choose the most cost-effective solution, and indeed it did choose the most cost-effective solution.

d. Recovery of the Entire Amount Disbursed Is Unwarranted

Commission precedent did not require Winston-Salem to cost-allocate out the costs associated with providing connectivity to security cameras, as explained above. However, USAC *should* seek recovery only for the costs associated with providing connectivity to security cameras. There is no inconsistency here: the fact that an applicant is allowed to seek full funding for mixed-use facilities does not mean that recovery for the full amount is appropriate. If USAC persists in seeking recovery of the full amount disbursed for the switches in question, it will be rescinding funding for other eligible network capabilities including, for example, access to the Internet for classroom use and wireless access points such as educational videos, printing, wireless access points to support student mobile devices, and so on. Accordingly, at most, USAC should seek recovery only for the costs associated with the provision of connectivity to the security cameras. Any other approach compromises statutory and program goals.

Conclusion

For the foregoing reasons, immixGroup respectfully requests that USAC cease its recovery efforts. If USAC declines to cease its recovery efforts, however, it should seek recovery only for the amount used to provide connectivity to security cameras, not the entire amount disbursed.

EXHIBIT 1



Universal Service
Administrative Co.

Recovery of Improperly Disbursed Funds Letter

Vivek Gupta
immixGroup Inc
8444 Westpark Drive, Suite 200
McLean, VA 22102

6/29/2018

Our review of your Schools and Libraries Universal Service Support Program (or E-rate) funding request has determined funds were committed in violation of Federal Communications Commission (FCC) rules. You have 60 days from the date of this letter to appeal the following decision(s). For more detailed information see below.

Total amount to be recovered: \$19,950.00

<i>FCC Form 471</i>	<i>FRN</i>	<i>Commitment adjustment</i>	<i>Total amount to be recovered</i>	<i>Explanation(s)</i>	<i>Party to recover from</i>
1038013	2835226	\$0.00	\$19,950.00	Ineligible Product/Service	Service Provider

See Attached Adjustment Report for more information on the specific FRNs and Explanations listed above.

Recovery of Improperly Disbursed Funds

Our review of your Universal Service Schools and Libraries Support Program (or E-rate) funding request(s) referenced in the Adjustment Report has determined funds were improperly disbursed in violation of Federal Communications Commission (FCC) rules. A copy of that Adjustment Report is also attached to this letter.



FCC rules require the Universal Service Administrative Company (USAC) to rescind commitments and recover funding when it is determined that funding was committed and disbursed in violation of the rules. This letter notifies you that USAC will be adjusting your funding commitment(s) and provides information on how to appeal this decision.

This is NOT a bill. If disbursed funds need to be recovered, USAC will issue a Demand Payment Letter. The debt referenced in the Demand Payment Letter will be due within 30 days of that letter's date. Failure to pay the debt may result in interest, late payment fees, and administrative charges and will invoke the FCC's "Red Light Rule."

FCC's Red Light Rule

The FCC Red Light Rule requires USAC to dismiss pending FCC Form 471 applications, appeals, and invoices or to net disbursements offsetting the debt if the entity responsible for paying the outstanding debt owed to the FCC has not paid the debt or made satisfactory arrangements to pay the debt within 30 days of the Demand Payment Letter. For information on the Red Light Rule, see

<https://www.fcc.gov/licensing-databases/fees/debt-collection-improvement-act-implementation>

To Appeal This Decision

If you wish to contest any part of this letter, you must first file an appeal with USAC to seek review of the decision. Parties that have filed an appeal with USAC and received an adverse decision may, if they choose, appeal USAC's decision to the FCC. Parties seeking a waiver of a codified FCC rule should file a request for waiver directly with the FCC because USAC cannot waive FCC rules. Your appeal to USAC or waiver request to the FCC must be filed within 60 days of the date of this letter.

All appeals filed with USAC must be filed in EPC by selecting "Appeal" from the menu in the top right hand corner of your landing page and providing the requested information.

Your appeal should include the following information. (Because you file the appeal through your EPC account, the system will automatically fill in some of these components for you).

- 1) Name, address, telephone number, and email address for the contact person for this appeal.
- 2) Indicate specifically that your letter is an appeal. Include the following to identify the USAC decision letter (e.g., Recovery of Improperly Disbursed Funds) and the decision you are appealing:



- a. Appellant name;
- b. Applicant name and service provider name, if different from appellant;
- c. Applicant BEN and Service Provider Identification Number (SPIN);
- d. FCC Form 471 Application Number and the Funding Request Number (FRN) or Numbers as assigned by USAC;
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3) Identify the problem and the reason for the appeal and explain precisely the relief sought. Please keep your appeal to the point, and provide supporting documentation. Be sure to keep a copy of your entire appeal, including any correspondence and documentation. A copy will automatically be saved for you in EPC. USAC will reply to your appeal submission to confirm receipt.

For more information on submitting an appeal to USAC including step by step instructions on how to file the appeal through EPC, please see "Appeals" in the Schools and Libraries section of the USAC website.

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The FCC recommends filing appeals or waiver requests with the Electronic Comment Filing System (ECFS) to ensure timely filing. Electronic waiver requests or appeals will be considered filed on a business day if they are received at any time before 11:59 PM ET. If you have questions or comments about using the ECFS, please contact the FCC directly at (202) 418-0193.

For more information about submitting waiver requests or appeals to the FCC, including options to submit the waiver request or appeal via U.S. mail or hand delivery, visit the FCC's website.

Schools and Libraries Division

cc: Colleen FitzGerald
WINSTON-SALEM/FORSYTH CO S D



Adjustment Report

FCC Form 471 Application Number: 1038013
Funding Request Number: 2835226
Commitment Adjustment: \$0.00
Total Amount to Be Recovered: \$19,950.00
Explanation(s): Ineligible Product/Service

Party to Recover From: Service Provider
Funding Year: 2015
Billed Entity Number: 126817
Services Ordered: INTERNAL CONNECTIONS
Service Provider Name: immixGroup Inc
SPIN: 143047906
Original Funding Commitment: \$161,167.54
Adjusted Funding Commitment: \$161,167.54
Funds Disbursed to Date: \$161,167.54

Funding Commitment Adjustment Explanation

During an Audit, it was determined \$19,950.00 was improperly disbursed for the following ineligible items: Switches Connected to Security Cameras. The pre-discount cost associated with these items is \$24,937.50, respectively, for a total ineligible amount of \$24,937.50. At the applicant's 80 percent discount rate, this resulted in an improper disbursement of \$19,950.00. FCC rules provide that funding may be approved only for eligible products and/or services. The USAC web site contains a list of eligible products and/or services. See the web site, <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx> for the Eligible Services List. On the SPAC Form, the authorized person certifies at Item 10 that the service provider has billed its customer for services deemed eligible for support. Therefore, USAC has determined that the service provider is responsible for this rule violation. Accordingly, USAC will seek recovery of \$19,950.00 of improperly disbursed funds from the service provider.



Recovery of Improperly Disbursed Funds Letter

Vivek Gupta
immixGroup Inc
8444 Westpark Drive, Suite 200
McLean, VA 22102

6/29/2018

Our review of your Schools and Libraries Universal Service Support Program (or E-rate) funding request has determined funds were committed in violation of Federal Communications Commission (FCC) rules. You have 60 days from the date of this letter to appeal the following decision(s). For more detailed information see below.

Total amount to be recovered: \$25,650.00

<i>FCC Form 471</i>	<i>FRN</i>	<i>Commitment adjustment</i>	<i>Total amount to be recovered</i>	<i>Explanation(s)</i>	<i>Party to recover from</i>
1038013	2834762	\$0.00	\$25,650.00	Ineligible Product/Service	Service Provider

See Attached Adjustment Report for more information on the specific FRNs and Explanations listed above.

Recovery of Improperly Disbursed Funds

Our review of your Universal Service Schools and Libraries Support Program (or E-rate) funding request(s) referenced in the Adjustment Report has determined funds were improperly disbursed in violation of Federal Communications Commission (FCC) rules. A copy of that Adjustment Report is also attached to this letter.



FCC rules require the Universal Service Administrative Company (USAC) to rescind commitments and recover funding when it is determined that funding was committed and disbursed in violation of the rules. This letter notifies you that USAC will be adjusting your funding commitment(s) and provides information on how to appeal this decision.

This is NOT a bill. If disbursed funds need to be recovered, USAC will issue a Demand Payment Letter. The debt referenced in the Demand Payment Letter will be due within 30 days of that letter's date. Failure to pay the debt may result in interest, late payment fees, and administrative charges and will invoke the FCC's "Red Light Rule."

FCC's Red Light Rule

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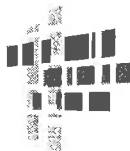
To Appeal This Decision

If you wish to contest any part of this letter, you must first file an appeal with USAC to seek review of the decision. Parties that have filed an appeal with USAC and received an adverse decision may, if they choose, appeal USAC's decision to the FCC. Parties seeking a waiver of a codified FCC rule should file a request for waiver directly with the FCC because USAC cannot waive FCC rules. Your appeal to USAC or waiver request to the FCC must be filed within 60 days of the date of this letter.

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- 1) Name, address, telephone number, and email address for the contact person for this appeal.
- 2) Indicate specifically that your letter is an appeal. Include the following to identify the USAC decision letter (e.g., Recovery of Improperly Disbursed Funds) and the decision you are appealing:



**Universal Service
Administrative Co.**

- a. Appellant name;
- b. Applicant name and service provider name, if different from appellant;
- c. Applicant BEN and Service Provider Identification Number (SPIN);
- d. FCC Form 471 Application Number and the Funding Request Number (FRN) or Numbers as assigned by USAC;
- e. "Recovery of Improperly Disbursed Funds," AND the exact text or the decision that you are appealing.

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As mentioned, parties seeking a waiver of FCC rules or that have filed an appeal with USAC and received a decision may file a request for waiver or appeal USAC's decision to the FCC. Waiver requests or appeals to the FCC must be made within 60 days of the issuance of USAC's decision and include all of the information referenced above for appeals to USAC.

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Schools and Libraries Division

cc: Colleen FitzGerald
WINSTON-SALEM/FORSYTH CO S D



Adjustment Report

FCC Form 471 Application Number: 1038013
Funding Request Number: 2834762
Commitment Adjustment: \$0.00
Total Amount to Be Recovered: \$25,650.00
Explanation(s): Ineligible Product/Service

Party to Recover From: Service Provider
Funding Year: 2015
Billed Entity Number: 126817
Services Ordered: INTERNAL CONNECTIONS
Service Provider Name: immixGroup Inc
SPIN: 143047906
Original Funding Commitment: \$130,077.18
Adjusted Funding Commitment: \$130,077.18
Funds Disbursed to Date: \$130,077.18

Funding Commitment Adjustment Explanation

During an Audit, it was determined \$25,650.00 was improperly disbursed for the following ineligible items: Switches Connected to Security Cameras. The pre-discount cost associated with these items is \$32,062.50, respectively, for a total ineligible amount of \$32,062.50. At the applicant's 80 percent discount rate, this resulted in an improper disbursement of \$25,650.00. FCC rules provide that funding may be approved only for eligible products and/or services. The USAC web site contains a list of eligible products and/or services. See the web site, <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx> for the Eligible Services List. On the SPAC Form, the authorized person certifies at Item 10 that the service provider has billed its customer for services deemed eligible for support. Therefore, USAC has determined that the service provider is responsible for this rule violation. Accordingly, USAC will seek recovery of \$25,650.00 of improperly disbursed funds from the service provider.

EXHIBIT 2

UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

PERFORMANCE AUDIT

WINSTON-SALEM/FORSYTH COUNTY SCHOOL DISTRICT

**COMPLIANCE WITH THE FEDERAL UNIVERSAL SERVICE FUND
SCHOOLS AND LIBRARIES SUPPORT MECHANISM RULES**

USAC AUDIT No. SL2016BE022



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**UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
WINSTON-SALEM/FORSYTH COUNTY SCHOOL DISTRICT
COMPLIANCE WITH THE FEDERAL UNIVERSAL SERVICE FUND
SCHOOLS AND LIBRARIES SUPPORT MECHANISM RULES**

Executive Summary

September 13, 2017

Mr. Wayne Scott, Vice President – Internal Audit Division
Universal Service Administrative Company
700 12th Street, N.W., Suite 900
Washington, DC 20005

Dear Mr. Scott:

Cotton & Company LLP (referred to as “we”) audited the compliance of Winston-Salem/Forsyth County School District (Beneficiary), Billed Entity Number (BEN) 126817, using regulations and orders governing the federal Universal Service Schools and Libraries Program (SLP), set forth in 47 C.F.R. Part 54, as well as other program requirements (collectively, the Rules). Compliance with the Rules is the responsibility of Beneficiary management. Our responsibility is to make a determination regarding the Beneficiary’s compliance with the Rules based on the audit.

We conducted this performance audit in accordance with our contract with the Universal Service Administrative Company (USAC) and Generally Accepted Government Auditing Standards, issued by the Government Accountability Office. Those standards require that we plan and perform the audit to obtain sufficient appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. The audit included examining, on a test basis: 1) evidence supporting the competitive bidding process undertaken to select service providers, 2) data used to calculate the discount percentage and the type and amount of services received, and 3) physical inventory of equipment purchased and maintained. It also included performing other procedures we considered necessary to make a determination regarding the Beneficiary’s compliance with the Rules. The evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

Based on the test work performed, our examination disclosed two detailed audit findings and no other matters, discussed in the Audit Results and Commitment Adjustment/Recovery Action section below. For the purpose of this report, a “detailed audit finding” is a condition that shows evidence of non-compliance with Rules that were in effect during the audit period. An “other

matter” is a condition that does not necessarily constitute a violation of the Rules but that warrants the attention of the Beneficiary and USAC management.

Certain information may have been omitted from this report concerning communications with USAC management or other officials and/or details about internal operating processes or investigations. This report is intended solely for the use of USAC, the Beneficiary, and the Federal Communications Commission (FCC) and should not be used by those who have not agreed to the procedures and accepted responsibility for ensuring that those procedures are sufficient for their purposes. This report is not confidential and may be released to a third party upon request.

Audit Results and Commitment Adjustment/Recovery Act

Based on the test work performed, our examination disclosed that the Beneficiary did not comply with the Rules, as set forth in the two detailed audit findings discussed below.

Audit Results	Monetary Effect	USAC Recovery Action	Recommended Commitment Adjustment
Finding No. 1, 47 C.F.R. § 54.502(a) – Beneficiary Over-Invoiced SLP for Ineligible Services – Beneficiary Over-Invoiced SLP. The Beneficiary did not remove ineligible charges from its service provider bills before invoicing SLP.	\$60,485	\$60,485	\$0
Finding No. 2, 47 C.F.R. § 54.504(a)(1)(iii) – Lack of Necessary Resources to Make Effective Use of Equipment. The Beneficiary is not using all of the equipment for which it requested funding.	<u>\$46,588</u>	<u>\$46,588</u>	<u>\$0</u>
Total Net Monetary Effect	<u>\$107,073</u>	<u>\$107,073</u>	<u>\$0</u>

USAC Management Response

USAC Management concurs with the Audit Results stated above for Finding No. 1. For Finding No. 2, USAC will conduct outreach to the Beneficiary and determine the recovery amount consistent with FCC Rules and Orders. In addition, USAC will request the Beneficiary provide copies of policies and procedures implemented to address the issues identified.

USAC also directs the Beneficiary to USAC's website under "Reference Area" for guidance on Invoicing available at <http://usac.org/sl/tools/reference-area.aspx>. Further, USAC recommends the Beneficiary and service provider subscribe to USAC's weekly News Brief which provides program participants with valuable information. Enrollment can be made through USAC's website under "Trainings and Outreach" available at <http://www.usac.org/sl/tools/news-briefs/Default.aspx>.

Purpose, Background, Scope, and Procedures

The purpose of the audit was to determine whether the Beneficiary complied with the Rules for Funding Year 2015. The Beneficiary is a school district located in Winston-Salem, North Carolina that serves more than 56,000 students.

The following chart summarizes the Schools and Libraries Program (SLP) support amounts committed and disbursed to the Beneficiary as of June 9, 2016, the date that our audit commenced.

Service Type	Amount Committed	Amount Disbursed
Internal Connections	\$5,359,758	\$5,241,894
Internet Access	\$16,128	\$16,128
Telecommunications	\$925,440	\$925,440
Voice	\$336,664	\$215,306
Total	<u>\$6,637,990</u>	<u>\$6,398,768</u>

The "amount committed" total represents 7 FCC Form 471 *Description of Services Ordered and Certification* applications submitted by the Beneficiary for Funding Year 2015 that resulted in 178 Funding Request Numbers (FRNs). We selected a sample of 15 of the 178 FRNs, which represent \$2,668,846 of the funds committed and \$2,604,632 of the funds disbursed during the audit period. Using this sample, we performed the audit procedures enumerated below.

A. Application Process

We obtained an understanding of the Beneficiary's processes relating to the SLP. Specifically, to determine if the Beneficiary used its funding in accordance with the Rules, we examined documentation to verify whether the Beneficiary used its funding effectively and whether it had adequate controls in place. We performed inquiries, direct observation, and inspection of documentation to determine whether the Beneficiary was eligible to receive funds and had the necessary resources to support the equipment and services for which it requested funding. We also conducted inquiries to obtain an understanding of the process the Beneficiary used to calculate its USAC Category 1 and Category 2 discount percentage and validated the accuracy of the discount percentage.

B. Competitive Bid Process

We obtained and examined documentation to determine whether the Beneficiary: 1) properly evaluated all bids received, and 2) primarily considered the price of the eligible services and goods in selecting the service provider. We also obtained and examined evidence that the Beneficiary waited the required 28 days from the date the FCC Form 470 *Description of Services Requested and Certification* was posted on USAC's website before signing contracts or executing month-to-month agreements with the selected service providers. In addition, we evaluated the cost-effectiveness of the equipment and services requested and purchased.

C. Invoicing Process

We obtained and examined invoices for which USAC disbursed payment to determine whether the equipment and services identified on the FCC Form 472, *Billed Entity Applicant Reimbursements (BEARs)*; FCC Form 474, *Service Provider Invoices (SPIs)*; and corresponding service provider bills were consistent with the terms and specifications of the service provider agreements. We also examined documentation to determine whether the Beneficiary paid its non-discounted share in a timely manner.

D. Site Visit

We performed a physical inventory to evaluate the location and use of equipment and services to determine whether they were properly delivered and installed, located in eligible facilities, and used in accordance with the Rules. We evaluated whether the Beneficiary had the necessary resources to support the equipment and services for which it had requested funding and evaluated the equipment and services purchased to determine whether the Beneficiary was using its funding in an effective manner.

E. Reimbursement Process

We obtained and examined equipment and service invoices that the Beneficiary submitted to USAC for reimbursement and performed procedures to determine whether the Beneficiary had properly invoiced USAC. Specifically, we reviewed service provider bills associated with the BEAR and SPI forms for equipment and services provided to the Beneficiary. We verified that the equipment and services identified on the BEAR and SPI forms and corresponding service provider bills were consistent with the terms and specifications of the service provider agreements and were eligible in accordance with the SLP Eligible Services List.

Detailed Audit Findings

Finding No. 1, 47 C.F.R. § 54.502(a) – Beneficiary Over-Invoiced SLP for Ineligible Services

Condition

The Beneficiary invoiced SLP for \$100,808 in ineligible voice service charges on BEAR No. 2332794 for FRN 2804418. The service provider bills supporting the BEAR spanned July to December 2015 and included ineligible data, messaging, and custom calling features. When

invoicing SLP for the voice service charges, the Beneficiary did not remove costs of cellular plans that the service provider identified as ineligible in its proposal to provide the services, nor did the Beneficiary remove other ineligible charges such as hotspot, navigation, extended warranty, caller identification, air card, text messaging allowance, and unlimited camera messaging charges.

Cause

The Beneficiary stated that it included ineligible costs on its invoices due to an oversight. The Beneficiary did not have adequate controls and procedures in place to ensure that it did not invoice USAC for ineligible services.

Effect

The Beneficiary overstated its invoices to SLP by \$100,808. The Beneficiary's discount rate for voice services was 60 percent, resulting in total overpayment of \$60,485.

Support Type	Monetary Effect	Recommended Recovery	Recommended Commitment Adjustment
Voice (FRN 2804418)	\$60,485	\$60,485	\$0

Recommendation

We recommend that:

1. USAC management seek recovery of the amount identified in the Effect section above.
2. The Beneficiary implement controls and procedures to ensure that it only invoices SLP for the cost of eligible services approved for funding.

Beneficiary Response

The Condition the audit observed is factual and the conclusion reached is valid. The Winston-Salem/Forsyth County School District made a clerical error and over-invoiced SLP for \$100,808 in ineligible voice service charges on BEAR No. 2332794 for FRN 2804418. The Winston-Salem/Forsyth County School District intends to comply with audit recommendations listed below.

1. *USAC management seek recovery of the amount identified in the Effect section above.*
2. *The Beneficiary implement controls and procedures to ensure that it only invoices SLP for the cost of eligible services approved for funding.*

Finding No. 2, 47 C.F.R. § 54.504(a)(1)(iii) – Lack of Necessary Resources to Make Effective Use of Equipment

Condition

The Beneficiary did not use all of the equipment for which it received SLP funding on FRNs 2835226, 2834762, and 2835422; and it was unable to demonstrate a current need for the unused equipment. We performed site visits to five schools to inspect equipment purchased with Funding Year 2015 E-rate funds. At two of the schools, Parkland High School (FRN 2835226) and Mt. Tabor High School (FRN 2834762), we identified a total of 16 switches that had been installed and mounted but that were not in use. Beneficiary representatives stated that some of the switches were reserved for security cameras, which USAC does not consider to be necessary for educational purposes. At a third school, Reagan High School (FRN 2835422), we identified three access points that the Beneficiary had purchased with E-rate funds but that were not included on the equipment list, had not been installed, and did not have a planned use.

Cause

The Beneficiary did not limit its Category 2 funding requests to equipment currently required for educational purposes.

Effect

The Beneficiary overstated its invoices to SLP by \$58,235, or the pre-discount cost of 16 switches and three access points. The Beneficiary's discount rate for internal connections was 80 percent, resulting in total overpayment of \$46,588.¹

Internal Connections	Monetary Effect	Recommended Recovery	Recommended Commitment Adjustment
2835226	\$35,949	\$35,949	\$0
2834762	\$9,653	\$9,653	\$0
9835422	\$986	\$986	\$0
<u>Total</u>	<u>\$46,588</u>	<u>\$46,588</u>	<u>\$0</u>

¹ The Beneficiary acquired the three access points as part of bundled packages. We estimated the cost of this equipment at \$411 per unit based on E-rate funding amounts requested for similar equipment within North Carolina.

Recommendation

We recommend that:

1. USAC management seek recovery of the amount identified in the Effect section above.
2. The Beneficiary implement stronger controls and procedures to ensure that it:
 - a. Only requests SLP funding and reimbursement for equipment that is necessary for educational purposes.
 - b. Maintains accurate fixed asset listings.

Beneficiary Response

The Condition the audit observed is factual, but the conclusion reached is disputed.

1. *The on-site audit was performed before the Service Delivery Deadline.*
 - a. *Funding year: 2015 (July 2015 through September 2016)*
 - b. *Date of FCDL: June 6, 2015*
 - c. *Date of on-site audit: August 8-9, 2016*
 - d. *Service Delivery Deadline: September 30, 2016*
 - e. *Last day to invoice: January 30, 2017*
2. *The auditor identified switches and access points that were in a central location within the designated school for configuration prior to final deployment. At the time of the on-site audit, nearly two months remained before the Service Delivery Deadline.*
3. *The intended use of the switches in question are to provide E-rate acceptable service for educational purposes. We agree that security cameras themselves are not E-rate eligible. However, the use of E-rate discounted network infrastructure to enable these devices is eligible in the same way VoIP devices are not eligible, yet their use of network infrastructure remains eligible and does not require a cost-allocation.*

When planning to make best use of our Category 2 ERATE funding opportunity, we adopted an infrastructure upgrade and enhancement strategy to fund all schools in year 1 of the new ERATE Modernization program. This strategy took the per student funding formula and calculated our expenses based on the infrastructure needs of each school in our district. Our budgetary and filing strategy to purchase all goods and services in year 1 was based on the following USAC FAQ, Question #1. <http://usac.org/sl/about/faqs/faqs-Category-Two-Budgets.aspx#top>. As we looked at the infrastructure and connectivity needs of the schools we also placed strong consideration on expected growth over a 5 year period. The growth factors included the following:

- *Addition of classroom technology over a 6 year period (2016-2022). This increase will require additional active wired connections in every classroom in the district including but not limited to:*
 - *School renovations including new classroom additions. Additional classrooms require additional wired ports for access points, IP phones, and computers.*

- Adding 1 interactive panel per classroom (approximately 3800 district wide) for educational purposes. These devices require a wired connection to accommodate student device mirroring.
- Adding IP phones to classrooms.
- IP Based security cameras. Our switch infrastructure and growth plan included port counts to support new and additional IP based security cameras at all sites. Although security cameras are considered an ineligible service, we made the assumption that a data switch purchased with ERATE funds could be used to connect a security camera. We based our assumption on the following documentation found at <http://usac.org/sl/applicants/beforeyoubegin/eligible-services/educ-purposes.aspx>.
- With the continued addition of student mobile devices, our 5 year growth strategy also included adding additional wireless access points as needed in all schools.

We fully understand the auditor's interpretation and documented finding. The intention was to best serve our students by providing the needed connectivity upgrades. If our interpretation of the ERATE FAQ and educational purposes documentation is inaccurate, we will make necessary adjustments on future ERATE funding applications.

Auditor Response

USAC does not consider equipment or services related to security cameras to be eligible. USAC denied the appeal and maintained USAC's position that cabling drops used for security cameras were ineligible. The FCC upheld USAC's decision that these services for security cameras were ineligible. See *Streamlined Resolution of Requests Related to Action by the Universal Service Administrator*, CC Docket No. 02-6, *et al.*, 31 FCC Rcd. 12697 (2016). Therefore, we did not make any revision to our finding.

Criteria

Finding	Criteria	Description
1	Billed Entity Applicant Reimbursement Form (FCC Form 472), OMB 3060-0856 (Jul. 2013), at 3, Block 3 (Billed Entity Certification).	<p><i>"I declare under penalty of perjury that the foregoing is true and correct and that I am authorized to submit this Billed Entity Applicant Reimbursement Form on behalf of the eligible schools, libraries, or consortia of those entities represented on this Form, and I certify to the best of my knowledge, information, and belief, as follows:</i></p> <p><i>A. The discount amounts listed in Column (14) of this Billed Entity Applicant Reimbursement Form represent charges for eligible services delivered to and used by eligible schools, libraries, or consortia of those entities for educational purposes, on or after the service start date reported on the associated FCC Form 486."</i></p>
1	47 C.F.R. § 54.502(a) (2015).	<i>Supported services. All supported services are listed in the Eligible Services List as updated annually in accordance</i>

Finding	Criteria	Description
		<i>with paragraph (b) of this section. The services in this subpart will be supported in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms.</i>
1	<i>Schools and Libraries Universal Service Support Mechanism et. al., CC Docket No. 02-6, et. al., 29 FCC Rcd 13404, Appendix C (2014). (2015 Eligible Services List).</i>	<p><i>III.B.I Category One</i></p> <p><i>...Pursuant to the E-rate Modernization Order, we remove from the ESL web hosting, voice mail, email, paging, directory assistance charges, text messaging, custom calling services, direct inward dialing, 900/976 call blocking, and inside wire maintenance plans.</i></p> <p><i>...Digital transmission services and Internet access services.</i></p> <p><i>...Data plans and air cards for mobile devices are eligible only in instances when the school or library seeking support demonstrates that the individual data plans are the most cost effective option for providing internal broadband access for mobile devices as required in the E-rate Modernization Order.</i></p> <p><i>...Eligible voice services.</i></p> <p><i>Eligible voice services are subject to an annual 20 percentage point phase down of E-rate support beginning in funding year 2015, as described in the E-rate Modernization Order. The reduced discount rate for voice services will apply to all applicants and all costs for the provision of telephone services and circuit capacity dedicated to providing voice services including:</i></p> <p><i>...Wireless telephone service including cellular voice and excluding data and text messaging.</i></p>
2	<i>47 C.F.R. § 54.516(a) (2015).</i>	<i>(a) Recordkeeping requirements—(1) Schools, libraries, and consortia. Schools, libraries, and any consortium that includes schools or libraries shall retain all documents related to the application for, receipt, and delivery of supported services for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request. Any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall be retained as well. Schools, libraries, and consortia shall maintain asset and inventory records of equipment purchased as components of supported category</i>

Finding	Criteria	Description
2	47 C.F.R. § 54.504(a)(1)(iii) (2015).	<p><i>two services sufficient to verify the actual location of such equipment for a period of 10 years after purchase.</i></p> <p><i>(a) Filing of the FCC Form 471. An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart shall, upon entering into a signed contract or other legally binding agreement for eligible services, submit a completed FCC Form 471 to the Administrator.</i></p> <p><i>(1) The FCC Form 471 shall be signed by the person authorized to order eligible services for the eligible school, library, or consortium and shall include that person's certification under oath that:</i></p> <p><i>(i) The schools meet the statutory definition of “elementary school” or “secondary school” as defined in § 54.500 of this subpart, do not operate as for-profit businesses, and do not have endowments exceeding \$50 million.</i></p> <p><i>(ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).</i></p> <p><i>(iii) The entities listed on the FCC Form 471 application have secured access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections, necessary to make effective use of the services purchased.</i></p>

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